

multimedia programming as a part of a single multimedia programming presentation at said receiver station, based on a subscriber input;

(2) receiving said at least one control signal which at the remote intermediate transmitter station is operative to control the communication of said instruct signal; and

(3) transmitting said at least one control signal to said at least one origination transmitter before a specific time.

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19. The method of claim 18, further comprising the step of embedding said at least one control signal in a signal containing said at least one instruct signal before transmitting at least a portion of said at least one instruct signal to said remote intermediate transmitter station.

20. (Twice amended) The method of claim 18, wherein at least one of (i) said specific time is a scheduled time of transmitting said at least one instruct signal or some information associated with said at least one instruct signal from said remote intermediate transmitter station, and (ii) said at least one control signal is effective at said remote intermediate transmitter station to control at least one of said plurality of selective transfer devices at different times.

II. REMARKS

A. Introduction

The Final Office Action dated January 8, 1998 (Final Office Action) has been carefully reviewed and the foregoing amendments made in response thereto.

Claims 2, 5-7, 9, 13, 14, 18 & 20 are amended. Claims 2-20 are pending in the application.

Claims 2-8 & 18-20 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention.

Claims 2, 4-12 & 18-20 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell et al., U.S. Pat. No. 4,536,791.

Claims 13-16 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell et al. in view of Lambert, U.S. Pat. No. 4,381,522.

Claim 3 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell, further in view of Nagel, U.S. Pat. No. 4,064,490.

Claim 17 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell in view of Lambert, and further in view of Nagel.

Claims 2-20 remain active in this application. No new matter is presented in the foregoing amendments. Approval and entry of same is respectfully requested.

B. Summary of Amendments

With respect to amended claim 2, the receiver station now receives at least two instruct signals in response to said subscriber command, wherein each one of said at least two instruct signals comprises: (1) a specific portion of multimedia programming, and (2) the designation of a function to be performed with said specific portion of multimedia programming. Additionally, Applicants have added the step of organizing at least two or more specific portions of multimedia programming in accordance with said specific function to be performed with each of said specific portion of multimedia programming, to further limit with more specificity the now deleted step of communicating. Finally, the step of outputting has additional limitations of the at least two or more specific portions of multimedia programming being a part of a single multimedia programming presentation.

With respect to amended claim 5, a grammatical error is corrected by reciting "fashion" in the singular.

With respect to amended claim 6, "instruct-to-coordinate" has been replaced with -- two instruct signals" consistent with independent claim 2. Additionally, the step of receiving and enabling has been changed to be consistent with independent claim 2 by reciting -- a specific portion of multimedia programming --, and -- performing said specific function --.

With respect to amended claim 7, "instruct-to-coordinate" has been replaced with -- two instruct signals" consistent with independent claim 2.

With respect to amended claim 9, former step (3) has been moved to step (2) to be more consistent with the element "specific subscriber input" as recited now *subsequently* in step (3). "An output" in step (3) has been replaced with the limitation -- at least two specific portions of multimedia programming for output --. Step (4) of processing the instruct signal now recites the organization and outputting of the two specific portions of multimedia programming in similar fashion to the amendment of claim 2. Finally, step (5) recites the datum which -- evidences -- the step of processing and outputting with respect to step (4).

With respect to amended claim 10, Applicants have amended the preamble to address only the subscriber reaction, to modify the step of storing to include at least one subscriber instruction to input a reaction, and to rewrite the step of receiving to recite at least one identifier which one of specifies and designates said at least one instruct signal.

With respect to amended claim 13, step (2) of receiving has been changed to recite the receiver station to organize and output at least two specific portions of mass medium programming in a similar fashion to claims 2 & 9, *supra*. Step (3) has been amended to be consistent with previous recitation of "at least one control signal."

With respect to amended claim 14, "said" has been deleted to eliminate a problem of a lack of antecedent basis.

With respect to amended claim 18, step (1) has been amended to replace "receiving" with -- originating --, in response to the Final Office Action's 35 U.S.C. § 112 rejection. Additionally, the instruct signal's operation at the receiver station has the similar recitation of organizing and outputting at least two specific portions of multimedia programming in similar fashion to claims 2, 9 & 13, *supra*.

With respect to amended claim 20, the recitation of "instruct signal" has been changed to -- at least one instruct signal --, consistent with the language of independent claim 18.

C. Response to Requirement Imposed Upon Applicants to Resolve Alleged Conflicts Between Applicants' Applications.

Applicants respectfully traverse the requirements of the Final Office Action paragraph 8.

Paragraph 8 of the Final Office Action requires Applicants to either:

- (1) file terminal disclaimers in each of the related 328 applications terminally disclaiming each of the other 327 applications; or
- (2) provide an affidavit attesting to the fact that all claims in the 328 applications have been reviewed by applicant and that no conflicting claims exist between the applications; or
- (3) resolve all conflicts between claims in the related 328 applications by identifying how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified 328 applications.

In addition, Examiner states that failure to comply with any one of these requirements will result in abandonment of the application.

Examiner states that the requirement has been made because conflicts exist between claims of the related co-pending applications, including the present application. Examiner sets forth only the serial numbers of the co-pending applications

without an indication of which claims are conflicting. Examiner has also attached an Appendix providing what is deemed to be clear evidence that conflicting claims exist between the 328 related co-pending applications and the present application. Further, Examiner states that an analysis of all claims in the 328 related co-pending applications would be an extreme burden on the Office requiring millions of claim comparisons.

Applicants respectfully traverse these requirements in that Examiner has both improperly imposed the requirements, and has incorrectly indicated that abandonment will occur upon failure to comply with the requirement. Applicants' traversal is supported by the fact that 37 C.F.R. § 1.78 (b) does not, under the present circumstances, provide Examiner with authority to require Applicants to either: 1) file terminal disclaimers; 2) file an affidavit; or 3) resolve all apparent conflicts. Additionally, the penalty of abandonment of the instant application for failure to comply with the aforementioned requirement is improper for being outside the legitimate authority to impose abandonment upon an application. The following remarks in Section (B) will explain Applicants' basis for this traversal.

1. The PTO's New Requirement is an Unlawfully Promulgated Substantive Rule Outside the Commissioner's Statutory Grant of Power

The PTO Commissioner obtains his statutory rulemaking authority from the Congress through the provisions of Title 35 of the United States Code. The broadest grant of rulemaking authority – 35 U.S.C. § 6 (a) -- permits the Commissioner to promulgate regulations directed only to “the conduct of proceedings in the [PTO]”. This provision does NOT grant the Commissioner authority to issue substantive rules of patent law. *Animal Legal Defense Fund v. Quigg*, 932 F.2d 920, 930, 18 U.S.P.Q.2d 1677, 1686 (Fed Cir. 1991).¹ Applicants respectfully submit that the Examiner's creation of a

¹Accord Hoechst Aktiengesellschaft v. Quigg, 917 F.2d 522, 526, 16 U.S.P.Q.2d 1549, 1552 (Fed Cir. 1990); Glaxo Operations UK Ltd. v. Quigg, 894 F.2d 392, 398-99, 13 U.S.P.Q.2d 1628, 1632-33 (Fed. Cir. 1990); Ethicon Inc. v. Quigg, 849 F.2d 1422, 1425, 7 U.S.P.Q.2d 1152, 1154 (Fed. Cir. 1988).

new set of requirements based upon 37 C.F.R. § 1.78(b) constitutes an unlawful promulgation of a substantive rule in direct contradiction of a long-established statutory and regulatory scheme.

2. The PTO's Requirement is a Substantive Rule

The first determination is whether the requirement as imposed by the PTO upon Applicants is substantive or a procedural rule. The Administrative Procedure Act offers general guidelines under which all administrative agencies must operate. A fundamental premise of administrative law is that administrative agencies must act solely within their statutory grant of power. *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). The PTO Commissioner has NOT been granted power to promulgate substantive rules of patent law. *Merck & Co., Inc. v. Kessler*, 80 F.3d 1543 (Fed. Cir. 1996), citing, *Animal Legal Defense Fund v. Quigg*, 932 F.2d 920, 930, 18 U.S.P.Q.2d 1677, 1686 (Fed. Cir. 1991).

The appropriate test for such a determination is an assessment of the rule's impact on the Applicant's rights and interests under the patent laws. *Fressola v. Manbeck*, 36 U.S.P.Q.2d 1211, 1215 (D.D.C. 1995). As the PTO Commissioner has no power to promulgate substantive rules, the Commissioner receives no deference in his interpretation of the statutes and laws that give rise to the instant requirement. *Merck & Co., Inc. v. Kessler*, 80 F.3d 1543 (Fed Cir. 1996), citing, *Chevron v. Natural Resources Defense Council*, 467 U.S. 837 (1984). When agency rules either (a) depart from existing practice or (b) impact the substantive rights and interests of the effected party, the rule must be considered substantive. *Nat'l Ass'n of Home Health Agencies v. Scheiker*, 690 F.2d 932, 949 (D.C. Cir. 1982), *cert. denied*, 459 U.S. 1205 (1983).

a. **The PTO Requirement is Substantive
Because it Radically Changes Long Existing
Patent Practice by Creating a New
Requirement Upon Applicants Outside the
Scope of 37 C.F.R. § 1.78 (b)**

The Examiner's requirement is totally distinguishable from the well articulated requirement authorized by 37 CFR § 1.78 (b), because it (1) creates and imposes a new requirement to avoid abandonment of the application based on the allegation that conflicts exist between claims of the related 328 co-pending applications, and (2) it results in an effective final double patenting rejection without the PTO's affirmative double patenting rejection of the claims. Long existing patent practice recognizes only two types of double patenting, double patenting based on 35 U.S.C. § 101 (statutory double patenting) and double patenting analogous to 35 U.S.C. § 103 (the well-known obviousness type double patenting).² These two well established types of double patenting use an objective standard to determine when they are appropriate³ and have a determinable result on the allowability of the pending claims.

The Examiner's new requirement represents a radical departure from long existing patent practice relevant to conflicting claims between co-pending applications of the same inventive entity. Two well established double patenting standards are based on an objective analysis of comparing pending and *allowed* claims. However, in the

²MPEP § 804(B)(1) states, in an admittedly awkward fashion, that the inquiry for obviousness type double patenting is analogous to a rejection under 35 U.S.C. 103: "since the analysis employed in an obvious-type double patenting determination parallels the guidelines for a 35 U.S.C. 103 rejection, the factual inquires set forth in Graham v. John Deere Co., 383 U.S. 1, 148 U.S.P.Q. 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103 are employed when making an obvious-type double patenting analysis".

³ The objective test for same invention double patenting is whether one of the claims being compared could be literally infringed without literally infringing the other. The objective test for obviousness type double patenting is the same as the objective nonobviousness requirement of patentability with the difference that the disclosure of the first patent may not be used as prior art.

present application, there are no *allowed* claims. The Examiner's new requirement to avoid a double patenting rejection presumes that conflicts exist between claims in the present application and claims in the 327 copending applications. This presumption of conflicts between claims represents a radical departure from long existing patent practice as defined by 37 C.F.R. § 1.78 (b), which states:

Where two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

Clearly, the only requirement authorized by the rule is the elimination of conflicting claims from all but one application where claims have been determined to exist. Furthermore, in order to determine that conflicting claims do in fact exist in multiple applications, the only possible analysis is obviousness-type double patenting, since there are no allowed or issued claims by which to employ the 35 U.S.C. § 101 statutory double patenting analysis. Once obviousness-type double patenting analysis has been applied and conflicting claims have been determined to exist, only a *provisional* obviousness-type double patenting rejection is possible until claims from one application are allowed.

In summary, the Examiner's new requirement departs from long-established practice because it (1) creates and imposes a new requirement to avoid abandonment of the application based on the allegation that conflicts exist between claims of the related 328 co-pending applications, and (2) it results in an effective final double patenting rejection without the PTO's affirmative double patenting rejection of the claims.

Therefore, the Examiner's new requirement departs from existing practice and therefore is a substantive rule beyond the authority of the PTO and is therefore, invalid.

b. The New Requirement is Also a Substantive Rule Because it Adversely Impacts the Rights and Interests of Applicants to Benefits of the Patent

The rights and benefits of a U.S. patent is solely a statutory right. *Merck & Co., Inc. v. Kessler*, 80 F.3d 1543 (Fed Cir. 1996). The essential statutory right in a patent is the right to exclude others from making, using and selling the claimed invention during the term of the patent. Courts have recognized that sometimes new procedural rules of the PTO are actually substantive rules, e.g. when the new rule made a substantive difference in the ability of the applicant to claim his discovery. *Freesola v. Manbeck*, 36 U.S.P.Q.2d 1211, 1214 (D.D.C. 1995) (emphasis added), citing, *In re Pilkington*, 411 F.2d 1345, 1349; 162 U.S.P.Q. 145 (C.C.P.A. 1969); and *In re Steppan*, 394 F.2d 1013, 1019; 156 U.S.P.Q. 143 (C.C.P.A. 1967).

The new requirement, on its face and as applied here, is an instance of a PTO rule making a substantive difference in Applicants ability to claim their invention and, therefore, must be considered a substantive rule. The requirement denies Applicants rights and benefits expressly conferred by the patent statute. The measure of the value of these denied rights and benefits is that the requirement, as applied here, would deny Applicants the full and complete PTO examination of Applicants' claims on their merits, as specified by 37 C.F.R. § 1.105. In addition, to file terminal disclaimers in each of the related 328 applications terminally disclaiming each of the other 327 applications based on the PTO's incomplete examination on the merits would deny Applicants' the benefit of the full patent term of 17 years on each of Applicants' respective applications. Applicants respectfully submit that the requirement has a huge impact on their rights and interests in the presently claimed invention.

c. Conclusion: Substantive Rule

In summary, the requirement is a change to long existing practice and/or has a substantive impact on the rights and interests of Applicants to their invention. Either

finding means that the new requirement is a substantive rule. Since the Commissioner has no power to issue substantive rules, the requirement is an improperly promulgated substantive rule having no force of law.

3. The PTO Requirement is Outside the Scope of 37 C.F.R. § 1.78 (b)

Rule 78 (b) states that:

Where two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application.

The only requirement that Rule 78 (b) authorizes is the elimination of conflicting claims from all but one co-pending applications.

In the instant Final Office Action, Examiner has not required the elimination of all conflicting claims from all but one application, but instead has required Applicants to: 1) file terminal disclaimers in each of the related 328 applications; 2) provide an affidavit; or 3) resolve all conflicts between claims in the related 328 applications. None of the options in the requirement is authorized by Rule 78 (b), and therefore Applicants respectfully submit that such a requirement is improper.

With respect to the PTO's authority to act within Rule 78 (b) regarding the rejection of conflicting claims, M.P.E.P. § 822.01 states that:

Under 37 CFR § 1.78 (b), the practice relative to overlapping claims in applications copending before the examiner..., is as follows: Where claims in one application are unpatentable over claims of another application of the same inventive entity because they recite the same invention, *a complete examination should be made of the claims of each application* and all appropriate rejections should be entered in each application, including rejections based upon prior art. *The claims of each application may also be rejected on the grounds of provisional double patenting on the claims of the other application* whether or not any claims avoid the prior art. Where appropriate, the same prior art may be relied upon in each of the applications. M.P.E.P. 822.01 (6th Ed., Rev. 3, 1997), (*emphasis added*).

In light of the requirement of the Final Office Action, M.P.E.P. § 822.01 and 37 CFR § 1.78 (b) are not applicable since there has not been any rejection with regard to the elimination of conflicting claims from all but one co-pending application.

4. The Assertion That Failure to Comply with the Requirement Will Result in Abandonment of Applicants' Application is Improper

Applicants' prospective failure to comply with the above requirements cannot properly result in abandonment of the present application. Applicants respectfully submit that abandonment of an application can properly occur only:

- (1) for failure to respond within a provided time period (under Rule 135);
- (2) as an express abandonment (under Rule 138); or
- (3) the result of failing to timely pay the issue fee (under Rule 316).

There is no provision in the rules permitting abandonment for failure to comply with any of the presented requirements. To impose an improper requirement upon Applicants and then hold the application is to be abandoned for failure to comply with the improper requirement violates the rules of practice before the USPTO.

Furthermore, Examiner is in effect attempting to create a substantive rule which is above and beyond the rulemaking authority of the USPTO, and therefore is invalid.

In the *Application of Mott*, 539 F.2d 1291, 190 USPQ 536 (CCPA 1976), the applicant had conflicting claims in multiple applications. The CCPA held that action by Examiner which would result in automatic abandonment of the application was legally untenable. *Id.* at 1296, 190 USPQ at 541. In the present application, Examiner has asserted that there are conflicting claims in multiple applications, and that non-compliance of the Final Office Action's requirement will result in an automatic abandonment. Therefore, under *Mott's* analysis, the Final Office Action's result of abandonment of Applicant's application is legally untenable.

5. Response to Apparent Conflict of Claims

Applicants submit that the presentation of the Final Office Action Appendix fails to demonstrate any conflicts between claims of the present application and claims of the co-pending applications. Rather, the Final Office Action Appendix compares representative claims of *other* applications in attempt to establish that "conflicting claims exist between the 328 related co-pending applications." Absent any evidence of conflicting claims between the Applicants' present application and any other of Applicants' co-pending applications, any requirement imposed upon Applicants to resolve such alleged conflicts is improper.

6. Request for Withdrawal of Requirement

Therefore, Applicants respectfully request that Examiner reconsider and withdraw the requirement that Applicants: (1) file terminal disclaimers in each of the related 328 applications terminally disclaiming each of the other 327 applications; (2) provide an affidavit attesting to the fact that all claims in the 328 applications have been reviewed by applicant and that no conflicting claims exist between the applications; or (3) resolve all conflicts between claims in the above identified 328 applications by identifying how all the claims in the instant application are distinct and separate inventions from all the claims in the above identified 328 applications, which upon failing to do so will abandon the application.

7. Filing of Supplemental Oath

Notwithstanding the foregoing, Applicants will file a supplemental oath under 37 C.F.R. § 1.67 for each application when Examiner identifies allowable subject matter. Applicants respectfully propose that the filing of individual supplemental oaths attesting to the absence of claim conflicts between previously patented claims and subsequently allowed claims is a more reasonable method of ensuring the patentable distinctness of subsequently allowed claims.

Under 37 C.F.R. § 1.105, § 1.106 & § 1.78 (b), Examiner has the duty to make every applicable rejection, including double patenting rejection. Failure to make every proper rejection denies Applicants all rights and benefits related thereto, e.g., Applicants' right to appeal, etc. Once obviousness-type double patenting analysis has been applied and conflicting claims have been determined to exist, only a *provisional* obviousness-type double patenting rejection is possible until claims from one application are allowed.

D. Information Disclosure Statement

The Applicants appreciate the Examiner's review of the Information Disclosure Statements filed 12/12/95, 2/1/96, 4/5/96 & 4/7/97 and have addressed those specific concerns raised in the office action. It is the Applicants' understanding that the Examiner raised the following 5 issues:

- (1) the reasons for such a large number of references cited,
- (2) foreign language references cited without a statement of relevance or translation have not been considered,
- (3) the relevancy of numerous references listed in the Information Disclosure Statements are subsequent to the Applicants' latest effective filing date of 11/3/81,
- (4) citation of references apparently unrelated to the subject matter of the claimed invention, and
- (5) citation of database search results listed in foreign languages where no copy was provided.

1. Reason for Citation of Large Number of References

The reason that the Applicants submitted such a large number of references in the Information Disclosure Statements was that a large portion of the information cited by the Applicants was brought to the Applicants' attention in the discovery processes in a previous litigation in the United States District Court for the Eastern District of

Virginia (*Personalized Mass Media Corp. v. The Weather Channel, Inc.* Docket No. 2:95 cv 242) and an investigation by the International Trade Commission (*In the Matter of Certain Digital Satellite System (DSS) Receivers And Components Thereof*, No. 337 TA 392, which was direct to U.S. Pat. No. 5,335,277) regarding claims in the Applicants' related issued patents. The documents listed in the Information Disclosure Statement were cited during the previous litigation/investigative proceedings by the alleged infringers in the aforementioned proceedings as being relevant and material to patentability of the claims in the related patents. The Applicants submitted those materials in the Information Disclosure Statement to the PTO at the earliest possible time in order to file them in compliance with the 3 month requirement stated in the certification used to submit the Information Disclosure Statement before the Final Office Action was issued as is necessary under 37 CFR § 1.97 (c) (1). In such haste, entries were inadvertently submitted which do not appear on their face to be material to the patentability of the present application. Applicants have corrected this error with the submission of the corrected Information Disclosure Statement as shown in Appendix B. However, it is the Applicants' understanding that not all references cited must be material to patentability in order for such references to be considered. In § 609 of the M.P.E.P., it states,

"[t]hese individuals also may want the Office to consider information for a variety of reasons: e.g., without first determining whether the information meets any particular standard of materiality, or because another patent office considered the information to be relevant in a counterpart or related patent application filed in another country, or to make sure that the examiner has an opportunity to consider the same information that was considered by the individuals that were substantially involved in the preparation or prosecution of a patent application."

Applicants' position is that information that was considered material in previous litigation would fall into the 'variety of reasons' category as stated above. Applicants intention was not to confuse or make difficult the examination process for the Examiner, but was instead to be forthright and open in disclosing all information deemed to be relevant to the application in issue by third parties.

2. Citations of Foreign Language References

Applicants have re-examined the foreign references listed in all of the Information Disclosure Statements and have either eliminated such references from the list, included translations herewith or provided statements as to the relevancy of such references (APPENDIX A). The inclusion of translations with this response is in compliance with 37 C.F.R. § 1.97 (f) which states in part, “[I]f a bona fide attempt is made to comply with 37 C.F.R. § 1.98, but part of the required content is inadvertently omitted, additional time may be given to enable full compliance.” The omission of any translations and/or relevancy statements for foreign references were inadvertent and unintentional and are herein submitted in accordance with 37 C.F.R. § 1.97 (f).

3. References in the Information Disclosure Statements Subsequent to Applicants' Latest Effective Filing Date of 9/11/87

Examiner stated “[n]umerous references listed in the IDS are subsequent to the applicant's latest effective filing date of 9/11/87, therefore, the relevancy of those references is unclear.” Upon further examination, the Applicants have eliminated those patents and publications after the effective filing date for the present application. It is the Applicants' understanding that the effective for the present application is 11/3/81.

4. Citation of Unrelated References

Applicants appreciate the Examiner pointing out such references that were listed yet on their face appear to be unrelated to the subject matter of the present application. In response to such information, the Applicants have reviewed the cited references and removed any such references which appear to be unrelated on their face to the claimed subject matter such as the patent for a beehive, the patent for a chemical compound and numerous computer printout search results.

5. Citation of Database Search Results

Database search results listed in foreign languages where no copy was provided have been eliminated from the substitute Information Disclosure Statement included with this office action.

The Applicants' offer the corrected Information Disclosure Statement (APPENDIX B) as a substitute to the previously filed Information Disclosure Statement filed 4/7/97. No new entries have been entered, only citations which have, upon further examination, been determined not to be relevant to the claimed subject matter have been eliminated, typographical errors have been corrected, dates inserted where possible and the list shortened as a result. It is the Applicants' intention that such corrected Information Disclosure Statement will help clarify any issues previously raised by the Examiner and aid in the prosecution of the present patent application.

E. Response to Rejections under 35 U.S.C. § 112, Second Paragraph

With respect to claim 2, the Final Office Action's notice of the omission of "comprising a" in line 12, has been rendered moot since Applicant has deleted the entire step wherein the language in question existed.

With respect to claim 18, the Final Office Action recites Applicants' "receiving said at least one instruct signal as said at least one origination transmitter station..." as not being clear what originates at the transmitter station if the signaling is received and not originated. Applicants have changed claim 18 in the first line of step (1) to recite -- originating -- in place of "receiving."

Applicants respectfully submit that claims 2-20 and amended claims 2, 5-7, 9, 13, 14, 18 & 20 of the subject application particularly point out and claim the subject matter sufficiently for one of ordinary skill in the art to comprehend the bounds of the claimed invention. The test for definiteness of a claim is whether one skilled in the art would understand the bounds of the patent claim when read in light of the specification, and if

the claims so read reasonably apprise those skilled in the art of the scope of the invention, no more is required. *Credle v. Bond*, 25 F.3d 1556, 30 U.S.P.Q.2d 1911 (Fed. Cir. 1994). The legal standard for definiteness is whether a claim reasonably apprises those of skill in the art of its scope. *In re Warmerdam*, 33 F.3d 1354, 31 U.S.P.Q.2d 1754 (Fed. Cir. 1994). Applicants' have amended claims 2, 5-7, 9, 13, 14, 18 & 20 to enhance clarity and respectfully submit that all pending claims are fully enabled by the specification and distinctly indicate the metes and bounds of the claimed subject matter.

Applicants' believe that the above recited changes are sufficient to overcome the rejections under 35 U.S.C. 112, second paragraph, and respectfully request withdrawal of these rejections.

F. Response to Obviousness Rejection of Claims Under 35 U.S.C. § 103 (a)

To establish a *prima facie* case of obviousness, three basic criteria must be meet. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references combined) must teach or suggest all the claim recitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not based on Applicants' disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). MPEP 706.02(j).

1. Independent Claim 2

Claims 2 & 4-8 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell et al., U.S. Pat. No. 4,536,791.

With respect to Applicants' newly amended claim 2, Campbell et al. fails to, *inter alia*, teach or suggest all the claim recitations, i.e., organizing said at least two or more specific portions of multimedia programming in accordance with said specific function

to be performed with each of said specific portion of multimedia programming; and
outputting said organized at least two or more specific portions of multimedia
programming as a part of a single multimedia programming presentation to at least one
of said output devices at said receiver station based on said step of organizing.

The Final Office Action equated Applicants' instruct signal with the subscriber control data of Campbell et al. Campbell et al. teaches subscriber control codes which enable or disable the descrambling of received programming at the addressable converter 40, based on channel enable codes, tier enable codes, event enable codes, and eligibility codes.

These [subscriber control data] are utilized by each subscribers's addressable converter 40 to determine the particular subscriber's authorization to receive each program and to control descrambling of the video signals. (Column 5, lines 31-35.)

However, Applicants amended claim language is directed towards the organization and outputting of at least two or more specific portions of multimedia programming as specified and designated by Applicants' at least two or more instruct signals as a part of a single multimedia programming presentation. The distinguishing factor of Applicants' claim language over Campbell et al., is how the receiver station manipulates and outputs the received programming. Campbell et al. receives subscriber control codes in transmitted scrambled programming to determine whether or not that specific addressable converter 40 is authorized to descramble programming, *supra*. If the correct codes are determined based on a comparison to predetermined data, then the descrambler is enabled and the unscrambled signal is sent the user television. Applicants' claim language is directed toward the organization of at least two specific portions of multimedia programming received at the receiver station, wherein each of these portions have a function performed with them as specified by a specifying and designating instruct signal. These at least two specific portions are then output based on the step of organizing as part of a single multimedia programming

presentation to at least one output device at the receiver station. Campbell et al. fails to teach Applicants' limitations of organizing and outputting at least two specific portions of multimedia programming as part of single multimedia presentation.

Applicants' assert that the newly amended language of claim 2 overcomes the Final Office Action's rejection of Campbell et al., and respectfully request that the 35 U.S.C. §103(a) rejection of claim 2 be withdrawn, and claim 2 be permitted to issue.

Claims 3-8 depends upon independent claim 2. As discussed *supra*, Campbell et al. fails to disclose every element of claim 2 and thus, *ipso facto*, Campbell et al. fails to anticipate dependent claims 4-8, and therefore, this rejection should be withdrawn and the claim be permitted to issue.

Claim 3 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell, further in view of Nagel, U.S. Pat. No. 4,064,490.

Claim 3 depends upon independent claim 2. As discussed *supra*, Campbell et al. fails to disclose every element of claim 2 and thus, *ipso facto*, Campbell et al. either alone or in combination with Nagel fails to anticipate dependent claim 3, and therefore, this rejection should be withdrawn and the claim be permitted to issue.

2. Independent Claim 9

Claims 9-12 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell et al., U.S. Pat. No. 4,536,791.

With respect to Applicants' newly amended claim 9, Campbell et al. fails to, *inter alia*, teach or suggest all the claim recitations, i.e., receiving at said subscriber station in accordance with said specific subscriber input, at least one instruct signal for processing and at least two specific portions of multimedia programming for outputting; processing said instruct signal which organizes said at least two specific portions of multimedia programming, and outputs said at least two specific portions of multimedia programming as a part of a single multimedia programming presentation based on said step of determining; and transferring from said subscriber station to said at least one

remote data collection station at least one datum which, based on said step of processing, evidences one of processing said instruct signal and outputting said multimedia programming presentation.

With respect to Applicants' above comments regarding the teaching of Campbell et al., Applicants' assert that the newly amended language of claim 9 overcomes the Final Office Action's rejection over Campbell et al. First, Campbell et al. fails to teach receiving at the receiver station/addressable converter 40 at least two specific portions of multimedia programming for outputting in accordance with specific subscriber input. Campbell et al. teaches the reception of a single television program in response to a subscriber reaction as the addressable converter 40. As Applicants have responded above, the at least two specific portions of multimedia programming are necessary with respect to Applicants' newly amended claim language to organize and subsequently output, based on the step of organizing, these at least two portions as a part of a single multimedia programming presentation. Campbell et al. fails to teach these limitations since the subscriber reaction only causes a single television program and its corresponding subscriber control data to be received at the addressable converter. Though Campbell et al. obviously teaches the addressable converter is capable of receiving at least two portions of television programming, each television program and its corresponding subscriber control data is transmitted to and processed at the addressable converter 40 singularly and sequentially in response to the subscriber input. There is no teaching in Campbell et al. of at least two portions of programming being received in response to a single subscriber input, and consequently, there is no teaching of the organization and outputting of those at least two portions of programming in a single multimedia presentation.

Secondly, since Campbell et al. fail to teach or suggest receiving at least two portions of programming in response to a single subscriber input, and the organization and outputting of those at least two portions of programming in a single multimedia

presentation, thus, *ipso facto*, Campbell et al. fails to teach transferring from said subscriber station to said at least one remote data collection station at least one datum which, based on said step of processing, evidences one of processing said instruct signal and outputting said multimedia programming presentation.

Applicants' assert that the newly amended language of claim 9 overcomes the Final Office Action's rejection of Campbell et al., and respectfully request that the 35 U.S.C. §103(a) rejection of claim 9 be withdrawn, and claim 9 be permitted to issue.

Claims 10-12 depend upon independent claim 9. As discussed *supra*, Campbell et al. fails to disclose every element of claim 9 and thus, *ipso facto*, Campbell et al. fails to anticipate dependent claims 10-12, and therefore, this rejection should be withdrawn and the claim be permitted to issue.

3. Independent Claim 13

Claims 13-16 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell et al. in view of Lambert, U.S. Pat. No. 4,381,522.

With respect to Applicants' newly amended claim 13, Campbell et al. in view of Lambert fails to, *inter alia*, teach or suggest all the claim recitations, i.e., at least one instruct signal operative at the remote receiver station to organize at least two specific portions of said multimedia programming and to output said at least two specific portions of said multimedia programming as a part of a single multimedia programming presentation at said receiver station, based on a subscriber reaction to information contained in said mass medium programming.

Again, as mentioned above in the responses to independent claims 2 & 9, Campbell et al. fails to teach Applicants' newly amended claim limitations since Campbell et al.'s subscriber reaction only causes a single television program and its corresponding subscriber control data to be received at the addressable converter. Though Campbell et al. obviously teaches the addressable converter is capable of receiving at least two portions of television programming, each television program and

its corresponding subscriber control data is transmitted to and processed at the addressable converter 40 singularly and sequentially in response to the subscriber input. Thus, there is no teaching in Campbell et al., either alone or in combination with Lambert, of an instruct signal operative at the remote receiver station to organize at least two specific portions of said multimedia programming and to output said at least two specific portions of said multimedia programming as a part of a single multimedia programming presentation at said receiver station, based on a subscriber reaction to information contained in said mass medium programming.

Secondly, since Campbell et al. fails to teach or suggest the above recited newly amended claim limitations, thus, *ipso facto*, Campbell et al., either alone or in combination with Lambert, fails to teach communicating said at least one instruct signal to said transmitter.

Applicants' assert that the newly amended language of claim 13 overcomes the Final Office Action's rejection of Campbell et al. in view of Lambert, and respectfully request that the 35 U.S.C. §103(a) rejection of claim 13 be withdrawn, and claim 13 be permitted to issue.

Claims 14-17 depends upon independent claim 13. As discussed *supra*, Campbell et al. in view of Lambert fails to disclose every element of claim 13 and thus, *ipso facto*, Campbell et al. in view of Lambert fails to anticipate dependent claims 14-16, and therefore, this rejection should be withdrawn and the claim be permitted to issue.

Claim 17 is rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell in view of Lambert, and further in view of Nagel.

Claim 17 depends upon independent claim 13. As discussed *supra*, Campbell et al. fails to disclose every element of claim 17 and thus, *ipso facto*, Campbell et al. either alone or in combination with Lambert and Nagel fails to anticipate dependent claim 13, and therefore, this rejection should be withdrawn and the claim be permitted to issue.

4. Independent Claim 18

Claims 18-20 are rejected under 35 U.S.C. § 103 (a) as being unpatentable over Campbell et al., U.S. Pat. No. 4,536,791.

With respect to Applicants' claim 18, Campbell et al. fails to, *inter alia*, teach or suggest all the claim recitations, i.e., said at least one instruct signal being effective at said at least one receiver station to organize at least two specific portions of multimedia programming and to output said at least two specific portions of multimedia programming as a part of a single multimedia programming presentation at said receiver station, based on a subscriber input.

Again, as mentioned above in the responses to independent claims 2, 9 & 13, Campbell et al. fails to teach Applicants' newly amended claim limitations since Campbell et al.'s subscriber reaction only causes a single television program and its corresponding subscriber control data to be received and processed at the addressable converter. Though Campbell et al. obviously teaches the addressable converter is capable of receiving and processing at least two portions of television programming, each television program and its corresponding subscriber control data is transmitted to and processed at the addressable converter 40 singularly and sequentially in response to the subscriber input. Thus, there is no teaching in Campbell et al. of at least one instruct signal being effective at said at least one receiver station to organize at least two specific portions of multimedia programming and to output said at least two specific portions of multimedia programming as a part of a single multimedia programming presentation at said receiver station, based on a subscriber input.

Applicants' assert that the newly amended language of claim 18 overcomes the Final Office Action's rejection of Campbell et al., and respectfully request that the 35 U.S.C. §103(a) rejection of claim 18 be withdrawn, and claim 18 be permitted to issue.

Claims 19 & 20 depend upon independent claim 18. As discussed *supra*, Campbell et al. fails to disclose every element of claim 18 and thus, *ipso facto*, Campbell

et al. fails to anticipate dependent claim 19 & 20, and therefore, this rejection should be withdrawn and the claims be permitted to issue.

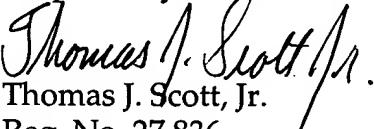
III. CONCLUSION

In accordance with the foregoing it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot. Further, all pending claims patentable distinguish over the prior art, taken in any proper combination. Thus, there being no further outstanding objections or rejections, the application is submitted as being in a condition for allowance, which action is earnestly solicited.

If Examiner has any remaining informalities to be addressed, it is believed that prosecution can be expedited by Examiner contacting the undersigned attorney for telephone interview to discuss resolution of such informalities.

Date: March 9, 1998
HOOKER & SIMON
1299 Pennsylvania Avenue, NW
Washington, D.C. 20004
Tel: (202) 783-0800

Respectfully submitted,


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Reg. No. 27,836
Attorney for Applicants

APPENDIX A

APPENDIX A

The following foreign reference has been cited by Applicants in the Information disclosure Statements filed 12-11-95, 12-22-95, 2-6-96, 4-17-96 and 4-7-97. Applicants have further included the following relevancy statement as well as an English abstract (in the case of foreign patents), thus meeting the requirements as set forth in 37 CFR 1.98 and MPEP § 609.

For the Information Disclosure Statement filed 12-22-95:

23 38 330 February 13, 1975 Germany

This reference discloses television receivers that transmit control signals to a decoder/processor combination.

For the Information Disclosure Statement filed 2-6-96:

61-050470 March 12, 1986 Japan

This reference discloses a program engagement device that displays the program content at a television receiver and includes a display output control device.

60-61935 April 9, 1985 Japan

This reference discloses a system that generates, detects, communicates, and/or converts digital signals.

For the Information Disclosure Statement filed 4-17-96:

2 058 681 June 15, 1972 Germany

This reference discloses a television mode arrangement for transmitting, receiving, and presenting coded information.

For the Information Disclosure Statement filed 4-7-97:

0 020 242 December 10, 1980 European

This reference discloses a teletext character alignment process.

0 046 108 February 17, 1982 European

This reference discloses a integrated circuit interface between a television receiver and recorder.

0 049 184 April 7, 1982 European

This reference discloses a pocket teaching aid using a television receiver with a teletext system.

0 055 167 June 30, 1982 European

This reference discloses a teletext CRT display for messages from a composite memory.

0 077 712 April 27, 1983 European

This reference discloses a multi-channel digital packet television broadcasting system.

0 078 185 May 4, 1983 European

This reference discloses a digital packet broadcasting system using television transmissions.

2 496 376 **June 18, 1982** **France**

This reference discloses a teletext display of data on the television screen.

2 516 733 May 5, 1983 France

This reference discloses an error controller for a teletext television decoder.

2 823 175 November 29, 1989 Germany

This reference discloses a teletext information display for television transmission.

24 53 441 May 13, 1976 Germany

This reference discloses a wideband signal transmission with digital to image signal conversion.

DE 30339949 May 6, 1982 Germany

This reference discloses a method for the generation of teletext display having a color character contrast.

DE 3112249 October 7, 1982 Germany

This reference discloses a processing signals from either a colored television receiver or from a video text decoder.

DE 3020787 December 17, 1981 Germany

This reference discloses a television transmission system that sends extra data during a blanking period.

WO 80/00292 February 21, 1980 Japan

This reference discloses a decoder for a television receiver that has a color component that splits signals and recombines the signals into a composite drive current signal.

WO 83/00789 March 3, 1983 Japan

This reference discloses an image display unit which displays received image signals via a memory, wherein the image signals include teletext displays of weather reports or television programs.

Graf, P.H., "Antiope-Uebertragung fuer Breitbandige Videotex-Verteildienste," 1981.

This reference shows an Antiope demodulator/detector.

Heller, Arthur, "VPS - Ein Neues System Zuragsgesteurten Programmanfzeichnung, Rundfunk technisde Mitteilungen, pp. 162-169.

This reference discloses a decoding system for use with a VCR.

Marti, B et al., Discrete, service de television cryptee, Revue de radiodiffusion - television (1975), pp. 24-30.

This reference discloses an analog decryption system.

Strauch, D., "(Las Media De Telecommunication Devant la Rapture. Les Nonvellas Methodes Presentees a L'Eposition International 1979 de Radio (Et Television)) 1979.

This reference is a discussion of videotext, teletext, ceefax, oracle, and antiope.

APPENDIX B



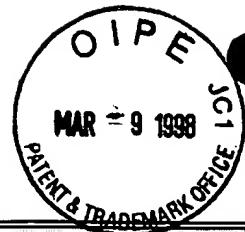
INFORMATION DISCLOSURE STATEMENT BY APPLICANT CITATION FORM	Attorney Docket No.	Serial No.
	05634.0355	08/487,526
	Applicant(s) John C. Harvey and James W. Cuddihy	
	Filing Date June 7, 1995	Group Art Unit 2731

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	2,563,448	August 7, 1951	Aram	178/5.1	
	3,071,649	January 1, 1963	Goodall	179/1.5	
	3,107,274	October 15, 1963	Roschke	178/5.1	
	3,133,986	May 19, 1964	Morris et al.	178/5.1	
	3,251,051	May 10, 1966	Harries	340/345	
	3,470,309	September 30, 1969	Nyberg	178/5.1	
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	3,526,843	September 1, 1970	Sanville	329/104	
	3,546,684	December 8, 1970	Maxwell et al.	340/172.5	
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	3,649,749	March 14, 1972	Gibson	178/5.6	
	3,651,261	March 21, 1972	Guanella	178/22	
	3,666,888	May 30, 1972	Sekimoto	178/69.5 TV	
	3,723,637	March 27, 1973	Fujio et al.	178/5.2R	
	3,746,799	July 17, 1973	Gentges	178/22	
	3,755,624	August 28, 1973	Sekimoto	178/69.5 TV	
	3,769,579	October 30, 1973	Harney	325/31	
	3,773,979	November 20, 1973	Kirk, Jr. et al.	179/15 FD	
	3,777,053	December 4, 1973	Wittig et al.	178/5.1	
	3,789,131	January 29, 1974	Harney	178/5.1	
	3,794,922	February 26, 1974	Osborn et al.	325/53	
	3,795,763	March 5, 1974	Golding et al.	178/5.6	
	3,813,482	May 28, 1974	Blonder	178/5.1	
	3,826,863	July 30, 1974	Johnson	178/5.1	
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	3,882,289	May 6, 1975	Walding et al.	200/11 D	
	3,885,089	May 20, 1975	Callais et al.	178/5.1	
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	3,894,177	July 8, 1975	Howell et al.	178/5.6	
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	3,924,059	December 2, 1975	Horowitz	178/5.1	
	3,950,618	April 13, 1976	Bloisi	179/2 AS	
	3,958,081	May 18, 1976	Ehrsam et al.	178/22	
	3,975,585	August 17, 1976	Kirk, Jr. et al.	178/5.1	
	3,990,012	November 2, 1976	Karnes	325/308	
	3,996,586	December 7, 1976	Dillon et al.	340/347 DD	
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	4,015,286	March 29, 1977	Russell	358/13	
	4,019,201	April 19, 1977	Hartung et al.	358/124	
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	4,027,267	May 31, 1977	Larsen	329/106	
	4,027,331	May 31, 1977	Nicol	358/135	
	4,042,958	August 16, 1977	Saylor et al.	358/141	
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	4,045,814	August 30, 1977	Hartung et al.	358/124	
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	4,070,693	January 24, 1978	Shutterly	358/123	
	4,075,660	February 21, 1978	Horowitz	358/124	
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	4,081,754	Mach 28, 1978	Jackson	325/396	
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	4,096,542	June 20, 1978	Pappas et al.	361/196	
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	4,214,273	July 22, 1980	Brown	358/188	
	4,215,366	November 13, 1984	Davidson	358/124	
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	4,246,611	January 20, 1981	Davies	358/194	
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 *If Pertinent
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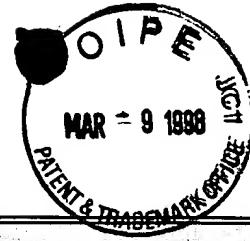
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